



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0278]

Hours of Service of Drivers: Application for Exemption; Harris Companies, Inc. (Harris)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of exemption.

SUMMARY: FMCSA announces its decision to deny the Harris Companies, Inc.

(Harris) application for exemption from the electronic logging device (ELD) rule for all its employees who are required to prepare records of duty status (RODS). This includes elevator technicians, electricians, other general laborers, and welders who operate commercial motor vehicles (CMVs) in interstate commerce. FMCSA has analyzed the exemption application and the public comments and determined that the applicant has not demonstrated that it would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the requested exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA

Driver and Carrier Operations Division: Telephone: (202) 366-4225 or

MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2020-0171 in the “Keyword” box and click “Search.” Next, click the “Open

Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency’s decision must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to five years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Harris, a family-owned and operated company comprised of an elevator division and an electric division, applied for an exemption from the use of ELDs required under 49 CFR 395.8. The exemption would cover the company’s 14 elevator technicians

and electricians and seven general laborers and welders who operate CMVs. The company currently uses electronic devices to document hours of service (HOS). However, given internet connectivity issues affecting operation of its ELDs, Harris requested the exemption to allow it to resume the use of paper RODS.

IV. Public Comments

On December 13, 2019, FMCSA published notice of the Harris application for exemption and requested public comment (84 FR 68287). The Agency received three comments, two opposing and one supporting the exemption request. The Commercial Vehicle Safety Alliance (CVSA) opposed this exemption, describing it as “both unjustified and impractical.” The CVSA noted that, “if granted, this exemption would negatively impact safety and place an excessive burden on the enforcement community. The Federal HOS requirements exist to help prevent and manage driver fatigue.” Mr. Michael Millard also opposed the request, stating that “[the] Harris Companies application for an exception from ELDs is most likely based on its small size and its thoughts on an added expense for installing ELDs.” In response to an opposing commenter, Harris filed a comment in favor of its own application. Harris’ comment emphasized the inability of its current ELDs to operate properly in rural areas with little to no internet connection.

V. Method to Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, Harris offered company safety policies and procedures. Harris referenced several ongoing company training programs to ensure compliance with the various Federal Motor Carrier Safety Regulations. These training programs include general safety and compliance policies, vehicle operating policies, HOS training and compliance, drug and alcohol testing procedures, and risk management services. In addition, Harris offered the continuous use of paper RODS for recording and tracking their drivers’ HOS compliance.

VI. FMCSA Response and Decision

FMCSA has evaluated the Harris application for exemption and the public comments submitted. When the Agency adopted the ELD rule in 2015, as mandated by Congress, it determined that ELDs would improve CMV safety and reduce the overall paperwork burden for both motor carriers and drivers. ELDs have led to improved compliance with the applicable HOS rules. Harris has failed to provide a sufficient analysis of the safety impacts of the requested exemption or adequate countermeasures to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. For these reasons, FMCSA denies the request for exemption.

Robin Hutcheson,

Deputy Administrator.

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